

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

October Term, 1914.

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No. 596.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

LUTHER JEROME SMULL.

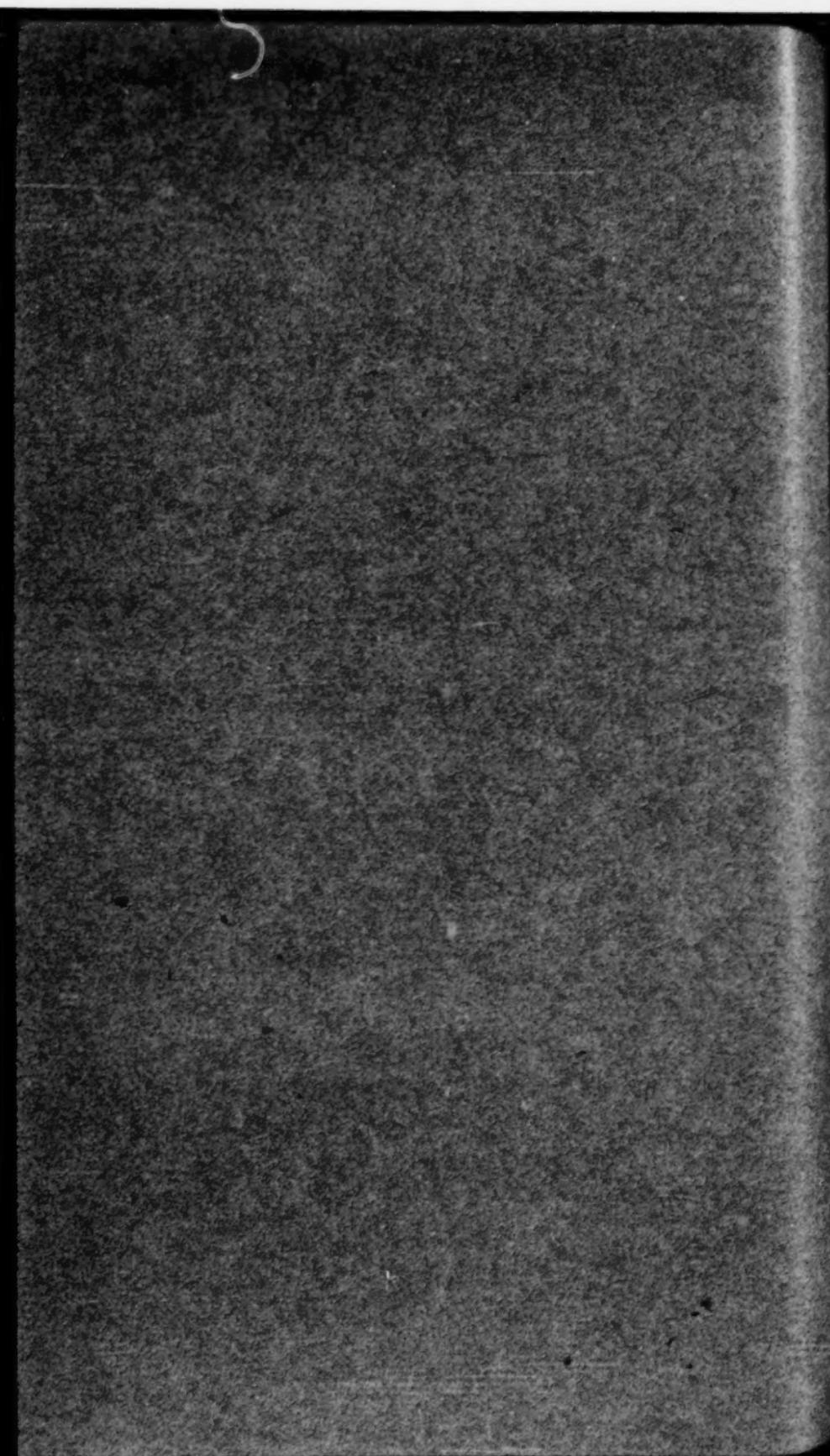
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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DIVISION OF OREGON.

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FILED AUGUST 14, 1914.

(24842)



SUPREME COURT OF THE UNITED STATES.

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THE UNITED STATES, PLAINTIFF IN ERROR,

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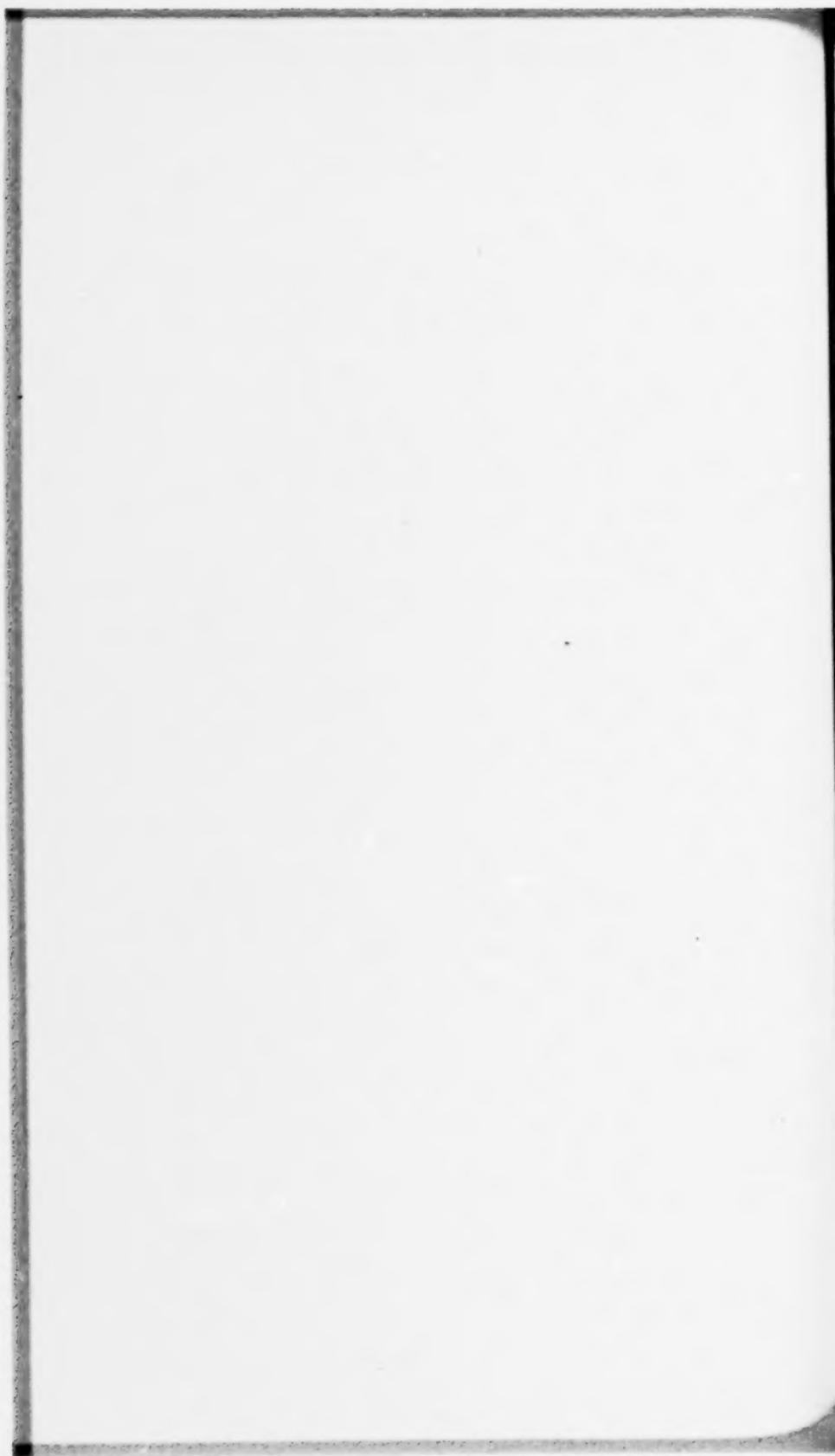
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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF OREGON.

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1      **In the District Court of the United States for the District of  
Oregon.**

Be it remembered, that on the 1 day of November, 1913, there was duly filed in the District Court of the United States for the District of Oregon an indictment in words and figures as follows, to wit:

2      **In the District Court of the United States for the District of  
Oregon.**

**LUTHER JEROME SMULL, DEFENDANT.**  
vs.  
**UNITED STATES OF AMERICA,** | Indictment for violation of  
section 125 of the Federal  
Penal Code.

UNITED STATES OF AMERICA,  
*District of Oregon, ss:*

The grand jurors of the United States of America for the District of Oregon, being duly empaneled, sworn, and charged to inquire within and for said district, upon their oaths and affirmations do charge Luther Jerome Smull with the crime of perjury, and the said grand jurors upon their oaths and affirmations do find, charge, allege, and present:

That on and for some time prior to the 29th day of April, 1912, J. C. Ardrey was the duly and lawfully appointed, elected, qualified, and acting receiver of the United States land office located in the city of Portland, in the county of Multnomah, in the State and District of Oregon, and within the Portland, Oregon, land district, and as such receiver was duly authorized by the laws of the United States and it was his duty to administer any oath required by law or by the instructions of the General Land Office to persons presenting themselves to him and desiring to avail themselves of all of the rights, powers, and privileges relating to the application for or entry on any vacant surveyed lands open to such application or entry under

3 the homestead laws of the United States and located within  
the Portland, Oregon, land district in the State and District of  
Oregon; that the laws of the United States and the rules and  
regulations provided for by such laws and promulgated and ap-  
proved thereunder and thereby on the part of the Department of the  
Interior and the Commissioner of the General Land Office require  
and provide that all persons so desiring to secure to themselves real  
property under the same homestead laws and to make application  
and entry thereunder shall and must make, execute, subscribe, and  
swear to an affidavit or written testimony, which affidavit or written  
testimony is in furtherance of and prescribed by the general home-  
stead laws of the United States, and which affidavit or written testi-  
mony shall or must contain facts, statements, declarations, or alle-

gations in and of the tenor, manner, form, and substance as follows, to wit:

4-007.

[Form approved by the Secretary of the Interior November 12, 1907.]

DEPARTMENT OF THE INTERIOR.

HOMESTEAD ENTRY.

U. S. Land Office, ----- Serial No. ----- Receipt No. -----

*Application.*

I, ----- (-----), a resident of -----  
(Give full Christian name.) (Male or female.) (Town, county,   
and State.) do hereby apply to enter, under section 2289, Revised Stat-

utes of the United States, the ----- section -----, township -----, range -----, ----- meridian, containing ----- acres, within the ----- land district; and I do solemnly swear that I am not the  
4 proprietor of more than 160 acres of land in any State of Territory; that I -----

(Applicant must state whether native born, naturalized, or

has filed declaration of intention to become a citizen. If not native born, certified copy  
of naturalization or declaration of intention, as case may be, must be filed with this

----- citizen of the United States, and am -----  
(State whether the head of a  
application.)

family, married or unmarried, or over twenty-one years years of age, and if not over  
twenty-one, applicant must set forth the facts which constitute him the head of a family.)  
that my post-office address is -----; that this application is honestly  
and in good faith made for the purpose of actual settlement and cul-  
tivation, and not for the benefit of any other person, persons, or cor-  
poration; that I will faithfully and honestly endeavor to comply  
with all the requirements of law as to settlement, residence, and cul-  
tivation necessary to acquire title to the land applied for; that I  
am not acting as agent of any person, corporation, or syndicate in  
making this entry, nor in collusion with any person, corporation,  
or syndicate to give them the benefit of the land entered, or any part  
thereof, or the timber thereon; that I do not apply to enter the same  
for the purpose of speculation, but in good faith to obtain a home for  
myself, and that I have not directly or indirectly made, and will not  
make, any agreement or contract, in any way or manner, with any  
person or persons, corporation or syndicate whatsoever, by which  
the title which I may acquire from the Government of the United  
States will inure in whole or in part to the benefit of any person ex-  
cept myself. I further swear that since August 30, 1890, I have not

5 entered and acquired title to, nor am I now claiming, under an entry made under any of the nonmineral public-land laws, an amount of land which, together with the land now applied for, will exceed in the aggregate 320 acres; and that I have not heretofore made any entry under the homestead laws (except

(Here describe former homestead entry by section, township, range, land district, and number of entry; how perfected, or if not perfected, state that fact.)  
 that I am well acquainted with the character of the land herein applied for and with each and every legal subdivision thereof, having personally examined same; that there is not to my knowledge within the limits thereof any vein or lode or quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor any deposit of coal, placer, cement, gravel, salt spring, or deposit of salt, nor other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that my application therefor is not made for the purpose of fraudulently obtaining title to mineral land; that the land is not occupied and improved by any Indian.

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily 6 identified before me by \_\_\_\_\_); that

I verily believe affiant to be a qualified applicant and the identical person hereinbefore described; and that said affidavit was duly subscribed and sworn to before me, at my office, in \_\_\_\_\_, (Town.) \_\_\_\_\_, with the \_\_\_\_\_ land district, this \_\_\_\_\_ day (County and State.) of \_\_\_\_\_, 19\_\_\_\_.

(Official designation of officer.)

UNITED STATES LAND OFFICE AT \_\_\_\_\_, 19\_\_\_\_.

I hereby certify that the foregoing application is for surveyed land of the class which the applicant is legally entitled to enter under section 2289, Revised Statutes of the United States, that there is no prior valid adverse right to the same, and has this day been allowed.

Register.

That on, to wit, the 29th day of April, 1912, the said defendant above named did appear in person at Portland, in the county of 7 Multnomah and State and district of Oregon, and within the Portland, Oregon, land district, and within the jurisdiction of

this court, before the said receiver of the Portland, Oregon United States land office, located as aforesaid, who was then and there such competent officer or person duly authorized to administer oaths of the herein-mentioned character, and said defendant seeking and petitioning the General Land Office of the United States for the right to enter upon and acquire title to the lands of the United States to certain hereinafter described, surveyed public lands of the United States, located in Clackamas County in said State and district, did then and there, knowingly, make, execute, and sign or subscribe a certain affidavit or written testimony which was and is authorized and required by the homestead laws of the United States and the rules and regulations of the Department of the Interior and the Commissioner of the General Land Office in furtherance of said laws which affidavit or written testimony of said defendant in words, letters, and figures was and is substantially as follows, to wit:

4-007.

[Form approved by the Secretary of the Interior, November 12, 1907.]

## DEPARTMENT OF THE INTERIOR.

## HOMESTEAD ENTRY.

U. S. Land Office, Portland, Oregon. Serial No. 03473. Receipt No. 599234.

*Application.*

I, Lue Smull, \_\_\_\_\_ (male) \_\_\_\_\_, a resident of \_\_\_\_\_  
(Give full Christian name.) (Male or female.)

8 Auburn, Washington, do hereby apply to enter, under  
(Town, county, and State.)

section 2289, Revised Statutes of the United States, the  
NW. 1/4 section 28, township 7 south, range 3 east, Willamette  
meridian, containing 160 acres, within the Portland, Oregon  
land district; and I do solemnly swear that I am not the pro-  
prietor of more than 160 acres of land in any State or Territory  
that I am a native-born \_\_\_\_\_

(Applicant must state whether native born, naturalized  
or has filed declaration of intention to become a citizen. If not native born, certified copy  
of naturalization or declaration of intention, as case may be, must be filed with application.)

citizen of the United States, and am a married man and over the  
age of 21 years.

(State whether the head of a family, married or unmarried, or other  
facts which constitute him the head of a family.)

twenty-one years of age, and if not over twenty-one, applicant must set forth the  
facts which constitute him the head of a family.)

be Scotts Mills, Oregon; that this application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation; that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that I am not acting as agent of any person, corporation, or syndicate in making this entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not directly or indirectly made, and will not make any agreement or contract in any way or manner with any person or persons, corporation or a syndicate whatsoever by which the title which I may acquire from the Government of the United States will inure in whole or in part to the benefit of any person except myself. I further swear that since August 30, 1890, I have not entered and acquired title to, nor am I now claiming, under an entry made under any of the nonmineral public-land laws, an amount of land, which, together with the land now applied for, will exceed in the aggregate 320 acres; and that I have not heretofore made any entry under the homestead laws; that I am well acquainted with the character of the land herein applied for and with each and every legal subdivision thereof, having personally examined same; that there is not to my knowledge within the limits thereof, any vein or lode or quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor any deposit of coal, placer, cement, gravel, salt spring, or deposit of salt, nor other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any portion of the year by any person or persons; that said land is essentially nonmineral land, and that my application therefor is not made for the purpose of fraudulently obtaining title to mineral land; that the land is not occupied and improved by any Indian.

LUE SMULL.

(Sign here with full Christian name.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant has been satisfactorily identified before me by John R. Grant, Auburn, Wash.; that I verily believe affiant to be a qualified applicant and the identical person hereinbefore described; and that said affidavit was duly subscribed and sworn to before me at my office in Portland, Multnomah County, Oregon, within the Portland, Oregon, land district this 29th day of April, 1912.

J. C. ARDREY,

Receiver.

Official designation of officer.

And thereupon said receiver of the Portland, Oregon, United States land office, who was then and there such competent officer or person, duly authorized to administer oaths in this case in which both the homestead law of the United States and the rules and regulations in furtherance of said laws, provided, approved, and promulgated by the Department of the Interior and the Commissioner of the General Land Office, authorized an oath to be administered at the special instance and request of said defendant, did then and there administer to said defendant the aforesaid oath to the effect that the allegations and matters set forth in said affidavit or written testimony were the truth, the whole truth, and nothing but the truth, and said defendant above named did then and there, among other

allegations as to matters material to his application and entry for said land, and his right and qualifications to make the same, solemnly and knowingly swear or affirm that said affidavit or written testimony by him signed or subscribed as hereinbefore described was true, and said defendant did wilfully, knowingly, unlawfully, feloniously, and contrary to said oath stated and subscribed among other material matters in said affidavit or written testimony a certain matter, to wit:

"I have not heretofore made any entry under the homestead law which matter, or statement, or written testimony was a material matter and which said defendant did not believe was true, since the defendant then and there well knew that he, the said defendant, had knowingly theretofore, to wit, on the 20th day of August, 1904, made application known and described as homestead entry number twelve thousand one hundred ninety-six (12,196) at the Spokane Falls, Washington, land office, to enter and had entered under the homestead laws of the United States that certain real property situated, known, and described as the south half of the northwest quarter (S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ ) and lots three (3) and four (4) of section four (4), in township twenty (20), north of range thirty-one (31), east of the Willamette meridian, containing one hundred forty-three and ninety-five hundredths (143.95) acres, located in Adams County in the State of Washington, and within the district of the Spokane Falls land office, and that said land last above described was passed to patent under the name and in favor of said defendant on a certain date, to wit, the 26th day of March, 1904; that the affidavit or written testimony of said defendant applying for the last above de-

scribed land located within the district of the Spokane Falls, Washington, land office, being homestead entry number twelve thousand one hundred ninety-six (12,196), was made, executed, subscribed, and sworn to by the said defendant before an officer or person duly authorized to administer said oaths, to wit, United States commissioner of said land office under the name and style of "Jerome Smull," and that the "Jerome Smull" making, executing, subscribing, and swearing to the affidavit or written testimony known as and being homestead entry number twelve thousand one hundred ninety-six (12,196) in the Spokane Falls, Washington,

land office on the 20th day of August, 1900, and the "Lue Smull" making, executing, and swearing to and subscribing the affidavit or written testimony known as and being homestead entry number naught three thousand four hundred and seventy three (03473) in the Portland, Oregon, land office on the 29th day of April, 1912, in the manner and form aforesaid, are one and identically the same party or person and the change in said given name of said defendant was by him, the said defendant, made and used for the purpose of deceiving the officers and employees of the Land Office of the United States and to enable said defendant the better to conceal the attempted repeated use of said defendant's former right to acquire land under the homestead laws of the United States and the rules and regulations of the Department of the Interior and of the Commissioner of the General Land Office in furtherance thereof; and so the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do find, charge, allege, and present that the said defendant, Luther Jerome Smull, having taken the said oath before the said receiver, who was competent to administer the same, that said 13 affidavit or written testimony by him so signed or subscribed as aforesaid, was true, wilfully and contrary to said oath, did then and there knowingly, fraudulently, and feloniously sign, subscribe, and swear to and affirm said matters herein set forth which were material and which said defendant did not believe to be true, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Dated at Portland, Oregon, this 1st day of November, 1913.  
A true bill.

ROBERT R. RANKIN,  
*Assistant U. S. Attorney.*  
WILL A. KNIGHT,  
*Foreman U. S. Grand Jury.*

Filed November 1, 1913.

14 And afterwards, to wit, on Monday, the 30 day of March, 1914, the same being the 25 judicial day of the regular March term of said court; present the Honorable R. S. Bean, United States district judge presiding, the following proceedings were had in said cause, to wit:

15 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA | No. 6192. March 30, 1914. Indictment:  
v. | Sec. 125 P. C.  
LUTHER JEROME SMULL.

Now, at this day, come the plaintiff by Mr. Robert R. Rankin, assistant United States attorney, and the defendant appearing in his own proper person and by Mr. Frank Miller, of counsel; whereupon said defendant is duly arraigned upon the indictment herein,

and on motion of said plaintiff it is ordered that he be and he is hereby allowed until Monday, April 6, 1914, to plead to said indictment.

16 And afterwards, to wit, on the 13 day of April, 1914, there was duly filed in said court a demurrer to indictment in words and figures as follows, to wit:

17 (Title of court and cause.)

Comes now the defendant and demurs to the indictment herein filed for the reason that said indictment does not state facts sufficient to constitute a valid indictment against the defendant herein.

FRANK R. MILLER,  
Attorney for Defendant.

UNITED STATES OF AMERICA,  
*District of Oregon, ss:*

I, Frank R. Miller, defendant's attorney, certify that I prepared the within demurrer and that in my opinion the same is well founded in law.

FRANK R. MILLER.

Subscribed and sworn to before me this 13th day of April, A. D. 1914.

[SEAL.]

H. DANIEL  
Notary Public for Oregon.

UNITED STATES OF AMERICA,  
*District of Oregon, ss:*

Due service of the within demurrer is hereby accepted in District of Oregon this 13th day of April, 1914, by receiving a copy thereof, duly certified to as such by Frank Miller, attorney for defendant.

ROBERT R. RANKIN,  
Asst. U. S. Atty.

Filed April 13, 1914.

18 And afterwards, to wit, on the 15 day of June 1914 there was duly filed in said court, an opinion in words and figures as follows, to wit:

19 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA, COMPLAINANT,  
vs.

LUTHER JEROME SMULL, DEFENDANT.

*Memorandum by R. S. Bean, district judge.*

The indictment charges Smull with the crime of perjury in falsely and corruptly swearing in a homestead application that "I have not heretofore made any entry under the homestead law" whereas in

truth and in fact he had made such entry. Demurrer on the ground that the indictment does not state a crime under any law of the United States.

Perjury is falsely testifying under oath "in any case where a law of the United States authorizes an oath to be administered." (Section 215, Penal Code.) It is admitted that there is no law of the United States expressly requiring a homestead applicant to make oath as to whether he had made a previous entry, but it is sought to sustain the indictment on the theory that the oath taken by the defendant is required by the rules and regulations of the Land Department made in pursuance of authority conferred by sections 161, 411, 453, 2246 and 2478 of the Revised Statutes. It is, I take it, settled that an indictment for perjury under section 125 of the Penal Code, cannot be based on an affidavit not authorized or required by any law of the United States, and that the sections 20 of the revised statutes referred to confer administrative powers only on the officers of the Land Department, and that a homestead claimant making an affidavit not required by section 2191 is not guilty of perjury although the affidavit was made in pursuance of the regulations of the Land Department. (U. S. vs. George, 228 U. S. 14. U. S. v. Maid, 116 Fed. 650.)

The demurrer is therefore sustained.

Filed June 15, 1914.

21 And afterwards, to wit, on Monday, the 15th day of June, 1914, the same being the 91 judicial day of the regular March term of said court; Present: the Honorable R. S. Bean, United States district judge presiding, the following proceedings were had in said cause, to wit:

22 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA  
v.  
LUTHER JEROME SMULL. } No. 6192. June 15, 1914. Indictment:  
Sec. 125 P. C.

This cause was submitted to the court on the demurrer of said defendant to the indictment herein; on consideration whereof, it is now ordered and adjudged that said demurrer be, and the same is hereby, sustained, and that the indictment herein be, and the same is hereby, dismissed.

23 And afterwards, to wit, on the 10 day of July, 1914, there was duly filed in said court, a petition for writ of error in words and figures as follows, to wit:

24 (Title of court and cause.)

*Petition for writ of error.*

Comes now the United States of America, plaintiff herein, by E. A. Johnson, assistant United States attorney for Oregon, and says, that

on the 15th day of June, 1914, the District Court above entitled entered judgment herein in favor of the defendant and against this plaintiff, in which judgment and the proceedings had prior thereto in this cause certain errors were committed, to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

E. A. JOHNSON,  
*Attorney for Plaintiff in Error.*

UNITED STATES OF AMERICA, *District of Oregon, ss:*

Due, legal and timely service of the foregoing petition for writ of error, by receipt by me of a copy thereof certified to by E. A. Johnson, assistant United States attorney for Oregon, is hereby admitted, at Portland, Oregon, this 10th day of July, 1914.

F. R. MILLER,  
*Attorney for Defendant in Error.*

Filed July 10, 1914.

25        And afterwards, to wit, on the 10th day of July, 1914, there was duly filed in said court assignments of error, in words and figures as follows, to wit:

26        (Title of court and cause.)

*Assignment of errors.*

The plaintiff in this action in connection with its petition for writ of error makes the following assignment of errors, which plaintiff avers exist:

I.

The court erred in sustaining the demurrer of the defendant to the indictment.

II.

The court erred in dismissing the indictment in the above-entitled cause.

III.

The court erred in not holding that section 2298 of the Revised Statutes of the United States, taken with sections 453, 2246, and 2478 thereof, authorized the Land Department of the United States to require an applicant for homestead entry of public lands to make affidavit as to whether or not and to what extent he has previously had the benefit of the homestead laws.

## IV.

The court erred in holding that section 2290 of the Revised Statutes of the United States inhibits the Public Land Department from requiring an applicant for a homestead entry to make oath to any matters other than those in that section described, and especially that it inhibits the said Public Land Department from requiring such an applicant to make oath as to whether and to what extent he has previously had the benefit of the homestead laws.

## V.

27 The court erred in holding that an applicant for public lands under the homestead laws who makes an affidavit to the effect that he had not theretofore made any entry of lands under the homestead laws, whereas in truth and in fact such applicant had made such entry, is not guilty of perjury where such affidavit is made in pursuance of the regulations of the Public Land Department of the United States.

## VI.

The court erred in hold and adjudging that the indictment in the above-entitled cause did not state facts sufficient to constitute and offense against the peace and dignity of the United States and did not constitute a valid indictment against the defendant therein.

E. A. JOHNSON,  
*Attorney for Plaintiff in Error.*

UNITED STATES OF AMERICA,

*District of Oregon, ss:*

Due, legal, and timely service of the foregoing assignment of errors, by receipt by me of a copy thereof certified to by E. A. Johnson, assistant United States attorney for Oregon, is hereby admitted, at Portland, Oregon, this 10th day of July, 1914.

F. R. MILLER,  
*Attorney for Defendant in Error.*

Filed July 10, 1914.

28 And afterwards, to wit, on the 10th day of July, 1914, there was filed in said court an order in words and figures as follows, to wit:

29 (Title of court and cause.)

*Order allowing writ of error.*

On this 10th day of July, 1914, the United States of America, the above-named plaintiff in error, by the assistant United States attorney for the District of Oregon, presenting to the court its petition

praying for the allowance of a writ of error in the above-entitled cause, and presenting an assignment of error intended to be urged by plaintiff praying also that a transcript of the record, proceedings, and papers upon which judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other proceedings may be had as are proper in the premises.

Now, in consideration thereof the court does allow the writ of error.

R. S. BEAN,  
*United States District Judge.*

UNITED STATES OF AMERICA,

*District of Oregon, ss:*

Due, legal, and timely service of the foregoing order allowing writ of error by receipt by me of a copy thereof certified to by E. A. Johnson, assistant United States attorney for Oregon, is hereby admitted at Portland, Oregon, this 10th day of July, 1914.

F. R. MILLER,  
*Attorney for Defendant in Error.*

Filed July 10, 1914.

30 And afterwards, to wit, on the 10 day of July, 1914, there was duly filed in said court a writ of error in words and figures as follows, to wit:

31 (Title of court and cause.)

*Writ of error.*

*The President of the United States of America to the judges of the District Court of the United States for the District of Oregon, greeting:*

Because in the rendition of the judgment on the demurrer to the indictment herein, which is in said court before you, between the United States of America, plaintiff, and Luther Jerome Smull, defendant, a manifest error has happened to the great damage of the said plaintiff, as by its petition appears, we being willing that the error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf do command you, if judgment be therein given, that under your seal distinctly and openly, you send the record and proceedings, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you may have the same at the city of Washington on the 8th day of September next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 10th day of July, in the year of our Lord one thousand nine hundred and fourteen, and of the Independence of the United States of America the one hundred and thirty-eighth.

[SEAL.]

A. M. CANNON,

*Clerk of the District Court of the United States  
for the District of Oregon.*

Allowed by

R. S. BEAN,

*United States District Judge.*

32 UNITED STATES OF AMERICA,  
*District of Oregon:*

Due, legal, and timely service of the foregoing writ of error, by receipt by me of a copy thereof certified to by E. A. Johnson, assistant United States attorney for Oregon, is hereby admitted at Portland, Oregon, this 10th day of July, 1914.

F. R. MILLER,  
*Attorney for Defendant in Error.*

Filed July 10, 1914.

32 $\frac{1}{2}$  And afterwards, to wit, on the 10 day of July, 1914, there was duly filed in said court, a citation in writ of error in words and figures as follows, to wit:

## 33 In the Supreme Court of the United States of America.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR, |  
v. |  
LUTHER JEROME SMULL, DEFENDANT IN ERROR. |

*The United States of America to Luther Jerome Smull, greeting:*

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden in the city of Washington on the 8th day of September next, pursuant to a writ of error filed in the office of the clerk of the District Court of the United States for the District of Oregon, wherein the United States of America is plaintiff and you are defendant in error to show cause, if any there be, why the judgment rendered against plaintiff in error, as in the said writ of error mentioned, should not be corrected and speedy justice be done to the parties in that behalf.

Given under my hand, at the city of Portland in the State and District of Oregon, this 10th day of July, in the year of our Lord 1914.

R. S. BEAN,

*Judge of the District Court of the United States  
for the District of Oregon.*

Filed July 10, 1914.

**34** UNITED STATES OF AMERICA,

*District of Oregon, ss:*

Due, legal, and timely service of the foregoing citation, by receipt by me of a copy thereof certified to by E. A. Johnson, assistant United States attorney for Oregon, is hereby admitted, at Portland Oregon, this 10th day of July, 1914.

**F. R. MILLER,**  
*Attorney for Defendant in Error.*

**35** And afterwards, to wit, on the 10th day of July, 1914, there was duly filed in said court, a praecipe in words and figures as follows, to wit:

**36** (Title of court and cause.)

*Praecipe for certified transcript of record on appeal to the United States Supreme Court.*

*To the clerk of the above-entitled court:*

Please make and issue a certified transcript of the record on appeal to the Supreme Court of the United States in the above-entitled cause, consisting of the following:

1. Typewritten copy of indictment returned in the above-entitled cause into said court on November 1, 1913.
2. Typewritten copy of record of arraignment of defendant, Luther Jerome Smull.
3. Typewritten copy of demurrer filed by defendant to the indictment.
4. Typewritten copy of the opinion of Hon. R. S. Bean in said cause, filed on June 15, 1914.
5. Typewritten copy of order and judgment of the above-entitled court, rendered June 15, 1914, sustaining the demurrer of defendant to the indictment and dismissing the indictment.
6. Typewritten copy of petition of plaintiff for writ of error.
7. Typewritten copy of plaintiff's assignment of errors.
8. Typewritten copy of order of court allowing writ of error.
9. Typewritten copy of writ of error.
10. Typewritten copy of praecipe for certified transcript of record on appeal to the United States Supreme Court.
11. Original certificate of clerk of the District Court of the United States for the District of Oregon to transcript of record.
- 37 12. Original citation on appeal to United States Supreme Court.

Omit title of court and cause from all proceedings and papers except the indictment, the judgment and order sustaining demurrer and dismissing the indictment, the citation on appeal, and the clerk's certificate; and in lieu of said omitted titles insert the following: "(Title of court and cause.)"

Omit all indorsements on all proceedings and papers excepting that portion thereof showing the date of filing of each thereof and the admission or acknowledgment of service of each or any thereof.

E. A. JOHNSON,  
Assistant United States Attorney for Oregon.

UNITED STATES OF AMERICA, *District of Oregon*, 88:

Due, legal, and timely service of the foregoing praecipe for certified transcript of record on appeal to the United States Supreme Court, by receipt by me of a copy thereof certified to by E. A. Johnson, assistant United States attorney for Oregon, is hereby admitted, at Portland, Oregon, this 10th day of July, 1914.

F. R. MILLER,  
Attorney for Defendant in Error.

Filed July 10, 1914.

38 UNITED STATES OF AMERICA, *District of Oregon*, 88:

I, A. M. Cannon, clerk of the District Court of the United States for the District of Oregon, hereby certify that the foregoing pages contain a full and true exemplification from the original records of this office of all the papers and proceedings therein in the case of the United States, plaintiff, vs. Luther Jerome Smull, defendant, as designated to be incorporated in the foregoing transcript in the praecipe filed by counsel and a part thereof.

In witness whereof I have hereunto set my hand and the seal of said court at Portland, in said district, this 30 day of July, 1914.

[SEAL.]

A. M. CANNON, Clerk.

39 In the Supreme Court of the United States of America.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR.

v.

LUTHER JEROME SMULL, DEFENDANT IN ERROR.

*Writ of error.*

*The President of the United States of America to the judges of the District Court of the United States for the District of Oregon, greeting:*

Because in the rendition of the judgment on the demurrer to the indictment herein, which is in said court before you, between the United States of America, plaintiff, and Luther Jerome Smull, defendant, a manifest error has happened to the great damage of the said plaintiff, as by its petition appears, we being willing that the error, if any has been, should be duly corrected and full and

speedy justice done to the parties aforesaid, in this behalf do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you may have the same at the City of Washington on the 8th day of September next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and customs of the United States should be done.

40 Witness, the Honorable Edward D. White, Chief Justice of the United States, the 10th day of July, in the year of our Lord one thousand nine hundred and fourteen, and of the Independence of the United States of America the one hundred and thirty-eighth.

[SEAL]

A. M. CANNON,  
*Clerk of the District Court of the  
United States for the District of Oregon.*

ALLOWED by

R. S. BEAN,  
*United States District Judge.*

41 UNITED STATES OF AMERICA,

*District of Oregon, ss:*

Due, legal and timely service of the foregoing Writ of Error, by receipt by me of a copy thereof certified to by E. A. Johnson, assistant United States attorney for Oregon, is hereby admitted, at Portland, Oregon, this 10th day of July, 1914.

F. R. MILLER,  
*Attorney for Defendant in Error.*

42 (Indorsed:) In the Supreme Court of the United States of America. United States of America, Plaintiff in Error. Luther Jerome Smull, Defendant in Error. Writ of Error. Filed July 10, 1914. A. M. Cannon, clerk U. S. District Court.

43 In the Supreme Court of the United States of America.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,  
v.

LUTHER JEROME SMULL, DEFENDANT IN ERROR.

*The United States of America to Luther Jerome Smull, greeting:*

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden in the City of Washington on the 8th day of September next, pursuant to a writ of error filed in the office of the clerk of the District Court of the United States for the District of Oregon, wherein the United States of America is plaintiff and you are defendant in error, to show

cause, if any there be, why the judgment rendered against plaintiff in error, as in the said writ of error mentioned, should not be corrected and speedy justice be done to the parties in that behalf.

Given under my hand, at the City of Portland in the State and District of Oregon, this 10th day of July, in the year of our Lord 1914.

R. S. BEAN,  
*Judge of the District Court of the United States  
for the District of Oregon.*

44 UNITED STATES OF AMERICA,  
*District of Oregon, ss:*

Due, legal, and timely service of the foregoing citation, by receipt by me of a copy thereof certified to by E. A. Johnson, assistant United States attorney for Oregon, is hereby admitted at Portland, Oregon, this 10th day of July, 1914.

F. R. MILLER,  
*Attorney for Defendant in Error.*

45 (Indorsed:) 6192. 18-277. In the Supreme Court of the United States of America. United States of America, plaintiff in error, vs. Luther Jerome Smull, defendant in error. Citation. Filed July 10, 1914. A. M. Cannon, clerk U. S. District Court.

(Indorsement on cover:) File No. 24342. Oregon, D. C. U. S. Term No. 598. The United States, plaintiff in error, vs. Luther Jerome smull. Filed August 14, 1914. File No. 24342.

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